

1 settlement on that is in effect taking sides
2 on a private contractual matter. The local
3 court will decide how much or whether he gets
4 it, but that's not a matter that the
5 Commission typically concerns itself with.

6 MR. SILVA: May I respond to that,
7 your Honor?

8 JUDGE SIPPEL: Yes. If you have --
9 if you, your client, and you don't have an
10 attributable interest and the Bureau is not
11 satisfied that you've convinced the Commission
12 of that fact, that it might be, you know,
13 these things can be structured, restructured,
14 and all kinds of things can happen in those
15 kinds of trust agreement, voting trust.

16 MR. GUSKEY: Your Honor.

17 JUDGE SIPPEL: Yes, sir.

18 MR. GUSKEY: This is Mr. Guskey. I
19 need to interject something here that's quite
20 relevant. Much of the dialogue, you know,
21 from Mr. Silva is complaining that the FCC has
22 imposed conditions regarding Mr. Waugh's stock

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1 ownership and attributable interest ship in
2 the form of that, but the bottom line is we
3 actually never get to the final decision as
4 far as the FCC regarding Mr. Waugh because --
5 before one gets to the matter as far as the
6 FCC's final decision on things, the company
7 has stepped forward and clearly documented and
8 described and communicated position to Mr.
9 Waugh that it had decided it will not give him
10 stock.

11 You know, so the court, you know,
12 can entertain all the conversations and
13 dialogue between the EB and Mr. Silva
14 regarding their points of view regarding
15 whether or not the FCC has any standing to
16 have any input into that environment, but we
17 never get to that point because the company
18 has decided that it --

19 JUDGE SIPPEL: Well, the company --
20 if there's been -- I don't want to, you know,
21 take this down the road, but, kick the can
22 down the road, if the company has made that

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1 decision and Mr. Waugh has a contractual right
2 to stop he feels, what's to prevent him from
3 going into court, a state court, and have that
4 adjudicated. And the court will perhaps issue
5 a specific performance if Mr. Waugh convinces
6 them of his position.

7 MR. GUSKEY: Absolutely nothing,
8 your Honor. And we made that argument in our,
9 in Preferred's settlement fact statement that
10 those avenues exist for Mr. Waugh. Mr.
11 Waugh's contention was that he was being
12 deprived of certain rights.

13 I vehemently disagree with that
14 phrasing. The reality is this is about claim.
15 He has a claim to, to compensation from the
16 company, whether it be monetary or in the form
17 of stocks, it is a claim.

18 His claim has not been affected by
19 this proceeding one way or another. You know,
20 and I think it's very telling that he has not
21 taking this issue to a court. Again, my
22 humble opinion is, you know, he hasn't taken

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1 this to a court because he doesn't believe he
2 will prevail.

3 And separate from whether that is,
4 you know, again, my personal opinion, one
5 thing that is very disturbing for Preferred is
6 that that Mr. Waugh has chosen this time and
7 place to draw a line and we believe he is
8 using undue influence, i.e., his signature on
9 a universal agreement to force the company
10 into compensating him in an amount and in a
11 form that it otherwise would not do.

12 JUDGE SIPPEL: Now, are you
13 referring to the agreement that disposes of
14 this case or this other agreement that was
15 mentioned going back into June of 2009?

16 MR. GUSKEY: I'm referring to Mr.
17 Waugh's position --

18 JUDGE SIPPEL: July --

19 MR. GUSKEY: -- in this proceeding,
20 this proceeding, which was led to the
21 settlement agreement signed by the EB and
22 Preferred.

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1 JUDGE SIPPEL: Okay.

2 MR. GUSKEY: And that his refusal
3 to, we believe in good faith, participate in
4 - that is because he sees that he has this
5 leverage to hold the company hostage because
6 he knows the value to the company of resolving
7 this proceeding and being able to move
8 forward.

9 And that's one of the reasons that
10 this is very emotional. It's very
11 contentious. There are a lot of people
12 involved with this. I don't if your Honor has
13 seen it as yet, but just yesterday, a group of
14 investors, they indicate that they represent
15 \$0 in total, filed in support of the
16 settlement agreement, i.e., the one that the
17 Enforcement Bureau and Preferred has signed.

18 JUDGE SIPPEL: I didn't see that.
19 I saw that there was a -- does that have to do
20 with the withdrawal of the appeal?

21 MR. GUSKEY: No, sir. There's
22 actually two groups of investors. One is led

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1 by or named by a Mr. Michael Judy.

2 JUDGE SIPPEL: Mr. Judy, yes.

3 MR. GUSKEY: Yes. And the other
4 group who, and, you know, I know that this is
5 very complicated and you need a scorecard to
6 keep track of things, but one of the things
7 that is in play in this situation is legally
8 that Mr. Judy is acting in consort with Mr.
9 Waugh to attempt to take control of the
10 company for their own benefit and personal
11 interest, which would be detrimental to the
12 remainder of the shareholders.

13 MR. SILVA: Your Honor, you know, I
14 think we're getting a little far off field
15 here.

16 JUDGE SIPPEL: Hold on just a
17 second.

18 MR. OSHINSKY: We need to observe
19 some decorum. If Mr. Guskey is finished then
20 Mr. Silva can break in.

21 JUDGE SIPPEL: Well, I understand
22 that, yes. I'm trying to keep this -- that's

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1 why we took a ten-minute break, not because we
2 had to take a break, but because it was
3 getting too hot in here. This is getting too
4 heated. Just keep it down.

5 Now, all right, so okay, so
6 there's allegations around something like
7 that, I think, in consort with Mr. Waugh.
8 Look, I can't get into that and -- get to the
9 point. Get to, get to the bottom of what
10 you're trying to say.

11 MR. GUSKEY: Well, the bottom-line,
12 your Honor, is the company has made a
13 decision, you know, to not issue stock to Mr.
14 Waugh, so that is, that is not going to
15 change.

16 JUDGE SIPPEL: All right. The
17 Bureau doesn't -- and the Bureau doesn't him
18 to get the stock either because it complicates
19 the settlement too much.

20 MS. SINGH: Your Honor, if I may
21 clarify. Before the break, I was cut off in
22 trying to defend the Bureau's position. The

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1 Bureau understands that Mr. Waugh frames this
2 as a contractual dispute that's outside of the
3 purview of this settlement, but at the same
4 time, in the July 8, 2009 letter that the
5 Bureau provided you a copy of, he also
6 requested that the settlement agreement if it
7 was to be universal include resolution of the
8 voting trust and stock that he claims is
9 outside of this proceeding.

10 So to the Bureau, we saw that
11 position statement, we reacted to it during
12 the July 8, 2009 conference call, we invited
13 Mr. Waugh through his counsel on July 31, 2009
14 to see if he had changed his position in any
15 respect, he had not. We told him that if we
16 were to settle this case before the next
17 deadline before your Honor, which is August
18 11, 2009 at the time, that we would have to
19 settle without him because of this position in
20 consistency between what Preferred wanted the
21 settlement to include and what Mr. Waugh
22 wanted the settlement to include. And I would

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1 like to add that the Enforcement Bureau's
2 position is entirely consistent with what Mr.
3 Guskey just told you.

4 MR. SILVA: Your Honor, could I
5 comment on that because there is some
6 misunderstanding here. The Bureau has from
7 the very beginning insisted that there would
8 not be a universal settlement unless Mr. Waugh
9 agreed to forego his claim. That is -- is
10 that not true?

11 MS. SINGH: That is incorrect, your
12 Honor.

13 MR. OSHINSKY: No, that is not
14 true. It is the form of compensation we're
15 arguing about and nothing else, just the form
16 of the compensation. Not that there might be
17 compensation owed, but simply the form that it
18 takes and that is all.

19 MR. SILVA: Well, okay.

20 MR. OSHINSKY: That's the
21 distinction you keep riding over.

22 MR. SILVA: Well, all right, your

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1 Honor. I mean, but the point was they said he
2 could not have stock. The stock could not go
3 to the voting trust, which is the original
4 agreement. -

5 JUDGE SIPPEL: There is an
6 enforcement interest though in having people
7 who are disqualified by a character
8 disqualification not having, not having stock
9 in a company.

10 MR. SILVA: But he, he was -- it
11 would be held by the trust, a nonvoting, non-
12 attributable interest, which he is entitled
13 to. I mean --

14 JUDGE SIPPEL: But I heard Ms.
15 Singh say that -- now, wait a minute. I heard
16 Ms. Singh say that, well, it's a five-year --
17 it's a five-year trust. It's not in
18 perpetuity.

19 MR. SILVA: Well, look, if there's
20 a problem with the details of the trust
21 agreement, I mean, that's certain --

22 JUDGE SIPPEL: Well, I -- that's --

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1 MR. SILVA: Well, it -- the trust
2 agreement was extended for an additional five
3 years. And, you know, the point is, as Mr.
4 Guskey has pointed out, the -- this trust
5 agreement is somewhat in limbo.

6 I mean, it's never been signed.
7 It's just been there. And the parties are
8 still trying to resolve this. But my point
9 is, why is the Bureau insisting that he, that
10 Mr. Waugh not get stock? It has really --

11 JUDGE SIPPEL: Well, I think I just
12 paraphrased it, but I'll ask Ms. Singh to say
13 it again or --

14 MR. SILVA: Well, let me --

15 JUDGE SIPPEL: Let her, let her
16 give her position.

17 MR. SILVA: All right. Well, I've
18 heard it, but the point is there's this
19 appearance that it was a sham, but they know
20 that it wasn't a sham now. They know that
21 there was no unauthorized transfer of control.
22 They know that Waugh didn't assume control and

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1 that Austin didn't relinquish control.

2 So why is this requirement on
3 settlement there? Why is it there? I mean,
4 why is -- Waugh being punished? Is it just
5 because of the appearance, some kind of
6 misconduct? He didn't do anything wrong.

7 JUDGE SIPPEL: All right. Let me,
8 let me hear with the Bureau says. Go ahead.

9 MS. SINGH: The presiding judge
10 aptly stated our position.

11 JUDGE SIPPEL: I'm sorry.

12 MR. SILVA: The presiding judge,
13 your Honor, you aptly stated our position.

14 JUDGE SIPPEL: You can't -- so far
15 there hasn't been a structure presented to you
16 that you can trust that is going to be
17 ironclad that's going to keep Mr. Waugh out
18 from becoming, somehow becoming a stockholder
19 or having owning rights or having control
20 rights or something with the company.

21 MS. SINGH: That is correct. And
22 it's not just the form of the individual

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1 voting trust. It is the idea that all
2 together -- because, as the Bureau described
3 to your Honor earlier today, it is the
4 existence of the voting trust in combination
5 with the existence of other documents that the
6 stock was issued to that voting trust as
7 described in the order to show cause in
8 combination with Mr. Waugh's past role as a
9 consultant with the company and his
10 involvement with its day-to-day affairs that
11 in combination prompted this hearing to be
12 designated.

13 The Bureau considered it serious
14 enough that it proposed as a penalty
15 forfeitures and revocation of the company's
16 licenses in part due to this, these
17 allegations. And thus it is the Bureau's
18 position that to present to us a form on which
19 we would sign off that puts Mr. Waugh in a
20 better position than he was at the start of
21 this proceeding if you believe his, his
22 statements on the record that the stock was

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1 never issued to him, that the voting trust was
2 never created. That's intolerable to the
3 Bureau.

4 JUDGE SIPPEL: But that's -- yes,
5 but you're saying that these are your
6 allegations. Now, Mr. Silva is saying, you
7 cut him out and he gets -- he perceives it
8 this way, Mr. Waugh gets cut out of this
9 agreement and he's sitting out there like a
10 duck with these allegations against him that
11 haven't been resolved.

12 MS. SINGH: Well, your Honor, the
13 proper form for those allegations if a
14 settlement agreement approval were to be
15 reinstated in this proceeding is the time at
16 which Mr. Waugh holds sufficient interest that
17 he can come before the Commission as an
18 applicant licensee permit or holder of Section
19 214 operating authority. Something over which
20 the Commission has jurisdiction and in which
21 Mr. Waugh has a sufficient enough interest
22 that his licensee qualifications can be

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1 decided at that time.

2 It is the Bureau's position that
3 if a settlement agreement were approved in
4 this case in the form that has been presented
5 to your Honor --

6 JUDGE SIPPEL: Yes.

7 MS. SINGH: -- then Mr. Waugh would
8 no longer hold such an interest and thus any
9 determination of his licensee character
10 qualifications would effectively take place in
11 a vacuum without an application permit or
12 operating authority or license to which that
13 character qualification could detach, attach.

14 MR. SILVA: Your Honor, we filed a
15 motion for summary decision.

16 JUDGE SIPPEL: You did?

17 MR. SILVA: And obviously the
18 parties haven't commented on it, and I'm not
19 asking them to today, --

20 JUDGE SIPPEL: Well, that -- go
21 ahead.

22 MR. SILVA: -- but from our

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1 standpoint, that resolves the case without a
2 hearing. It's a more honest and direct
3 approach and all it does is it says, look,
4 there was no unauthorized transfer of control,
5 there was nothing to hide and nothing was
6 hidden, and the issues, there's no genuine
7 issue of fact, so resolve the case without a
8 hearing.

9 MS. SINGH: Your Honor, if I may.

10 JUDGE SIPPEL: Yes, of course.

11 MS. SINGH: The Bureau's position
12 is that its commitments in terms of a
13 settlement agreement are not to be taken part
14 and parcel as its hearing position, and
15 therefore, the Bureau at this time cannot
16 comment on whether it would be in its interest
17 to resolve this case through the motion for
18 summary judgment teed-up by Mr. Waugh.

19 JUDGE SIPPEL: Well, I understand
20 that and there was right in reserve by the
21 Bureau to file a detailed, a more detailed
22 opposition to the motion if that, if it came

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1 down to that. Just hearing what you're saying
2 though that there's allegations of a, of a,
3 you say that there have actually been stock
4 transfers made or there's been stock transfers --
5 into this trust that the allegation that your
6 -- and am I right? Is that what you're
7 alleging?

8 MS. SINGH: Essentially, your
9 Honor, the order to show cause describes what
10 you're describing --

11 JUDGE SIPPEL: All right.

12 MS. SINGH: -- that there is record
13 evidence suggesting that a voting trust was
14 created and there is a stock certificate out
15 there that issues 800,000 shares to either
16 that trust or a trust that is named
17 sufficiently like it.

18 And there is a dispute as to
19 whether these documents are valid. And the
20 Bureau respectfully submits that it would
21 appear that if Mr. Waugh were to seek summary
22 judgment as the vehicle to resolve this case,

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1 it would be inappropriate for two reasons at
2 least.

3 One, there would be other issues
4 that remain outstanding that would not be
5 covered by Mr. Waugh's motion for partial
6 summary disposition, and two, there is a
7 dispute as to the record evidence in this case
8 and what it means. And the Bureau is only
9 willing to waive the opportunity for a hearing
10 to determine credibility findings as to what
11 people would say about that evidence.

12 In the interest of a settlement
13 agreement, which it believes is in the public
14 interest and the best outcome for this
15 proceeding, Mr. Waugh's summary judgment
16 motion does not accomplish any of those same
17 objectives because it doesn't allow the
18 company to move forward. It leaves issues
19 pending with regard to the company that would
20 still leave it in hearing.

21 It doesn't allow for any vehicle
22 for the company to get its waiver granted

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1 that's currently pending in the Wireless
2 Telecommunications Bureau. It doesn't allow
3 a vehicle for rebanding as to the company and
4 as to its licenses in public safety areas in
5 Puerto Rico and the U.S. Virgin Islands to
6 move forward.

7 The settlement agreement that
8 Preferred agreed to, that Mr. Bishop agreed
9 to, and that the Bureau agreed to provides an
10 avenue that is in the public interest in which
11 the companies have agreed to, to allow all
12 these things to move forward. Mr. Waugh's
13 summary judgment motion at least would fail to
14 accomplish those objections in addition to the
15 other deficiencies that I've already noted for
16 you.

17 MR. SILVA: Well, your Honor, first
18 of all, Mr. Waugh had nothing to do with that
19 issuance of the stock that counsel has
20 referred to. And I think the depositions of
21 both Mr. Austin and Mr. Waugh have made that
22 perfectly clear unless the Bureau has some

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1 other evidence. But Mr. Waugh had nothing to
2 do with that and it's not really relevant to
3 this whole discussion.

4 - I mean the issue in this case is
5 whether or not there was an unauthorized
6 transfer of control and the motive behind this
7 unauthorized transfer of control was to hide
8 the fact that Mr. Waugh was the beneficiary of
9 a voting trust. And I think the record has
10 shown so far that there was no transfer of
11 control, and moreover, the motive doesn't
12 exist because there wasn't any requirement
13 that Preferred disclosed who beneficiaries of
14 voting trust were.

15 So my point is, my client really
16 hasn't done anything wrong here despite the
17 appearance that the, that the counsel keeps
18 making reference to. There wasn't anything
19 wrong with setting up a voting trust. There
20 wasn't any unauthorized transfer of control.
21 My client didn't do anything wrong. In fact,
22 Preferred didn't do anything wrong.

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1 They didn't advocate control. So
2 why isn't summary decision the best way? Now,
3 my summary decision was partial, I don't
4 represent Mr. Bishop, I don't represent
5 Preferred. I submitted a motion for summary
6 decision on behalf of my client.

7 JUDGE SIPPEL: I understand. I
8 understand.

9 MR. SILVA: It doesn't -- it
10 doesn't suffer from the malady that this
11 settlement agreement does. Number one, it
12 doesn't prejudge Mr. Waugh's involvement or
13 how much -- not his involvement, but his
14 interest in the company, which is apparently
15 everyone concedes, a civil matter.

16 So what would the Bureau do if we
17 just eliminated that one clause from their
18 settlement agreement? Would that be agreeable
19 to them? Apparently not.

20 MS. SINGH: Your Honor --

21 MR. SILVA: The one clause that
22 prohibits Mr. Waugh from getting an interest

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1 in the company. Your suggestion I think was
2 very good. We leave it up to the local court.
3 He gets whatever he's entitled to by a local
4 court. And he isn't prejudged. No findings
5 are being made about whether he's qualified or
6 not qualified, or the appearance of this
7 voting trust or anything else.

8 JUDGE SIPPEL: Well, the Bureau --

9 MR. SILVA: That resolves the case.

10 JUDGE SIPPEL: The Bureau is --
11 well, that's true and I'm trying to, I'm
12 trying to test theories in terms of how we,
13 what road we might go down. I'm not, I'm not
14 saying that that would be an absolute --
15 obviously, saying, just throwing out a phrase
16 saying, subject to a subsequent order from a
17 court of jurisdiction, you know, that sounds
18 good, but this gets to be a little bit more
19 complicated and I appreciate that.

20 The point is, let me come down to
21 what I see the point to be. The point is that
22 there's an allegation, you've been charged in

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1 the order to show cause with some kind of
2 surreptitious transfer or attempt to transfer
3 a control or voting rights in a company. As
4 long as that's on the books, there's nothing
5 that the Bureau can do.

6 The Bureau cannot agree to having
7 you get stock without resolving that issue.
8 And you're saying, well, we can do it by
9 summary decision, but a wave of the hand isn't
10 going to do that. When you start getting down
11 into credibility issues and questions of who
12 did what, when, where, and why, it's very
13 difficult to go by way of summary decision.

14 MR. SILVA: Yes, but, your Honor, -
15 -

16 JUDGE SIPPEL: Usually the parties
17 -- usually on the summary -- wait a minute,
18 just a second. My experience with the summary
19 decision motion depositions incident to a
20 settlement, generally my experience has been
21 anyway that the Bureau does not object. It's
22 not a formality.

1 I mean, there's a record made in
2 terms of what, what the undisputed facts are,
3 but the facts remain to be undisputed. If the
4 Bureau goes in and says they, you know, makes
5 the, take the positions that Ms. Singh is
6 taken, it's very, very difficult to issue
7 summary decision because these fact issues
8 depend on credibility findings.

9 MR. SILVA: Well, as far as whether
10 or not there was an unauthorized transfer of
11 control, I don't think there's any dispute
12 between Mr. Austin and Mr. Waugh. And the
13 other thing about an unauthorized transfer of
14 control is you can't punish one person for
15 assuming control without punishing the other
16 one for relinquishing control.

17 And, you know, that's the problem
18 really with this whole settlement. They've,
19 they've taken sides on who's at fault here.
20 When the reality is, nobody is at fault.
21 Nobody is at fault.

22 MS. SINGH: Your Honor, if I may, a

1 few points. One, my statements to you
2 currently concerning the motion for summary
3 disposition are hypothetical and they do not
4 necessarily represent the entirety of the
5 Enforcement Bureau's position. We haven't had
6 an opportunity to comment in substance on that
7 motion. .

8 I'm only pointing out certain
9 procedural defects to resolving the entire
10 case only through that motion and the Bureau
11 has not yet responded in writing, and
12 therefore, would not consider it appropriate
13 at this point to advance its entire position
14 at oral argument on that motion.

15 JUDGE SIPPEL: I'm not asking you
16 it.

17 MS. SINGH: Thank you, your Honor.
18 I'm just pointing out since counsel has in
19 effect argued on the reasoning behind this
20 motion, I would just take that opportunity to
21 point it out.

22 And the second thing is that, that

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